IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 2ND AUGUST 2007 / 11TH SRAVANA 1929

WP(C).No. 23611 of 2007(J)

AGAINST THE ORDER DATED 18/06/2007 IN EP 171/2006 IN OS.786/2004 of II ADDL.M.C.,NEYYATTINKARA

.....

PETITIONER:

PALAYYAN, S/O. RAJAPPAN, AGED 53 YEARS,
MANAPAZHINJI VEEDU, NEDIYAMCODE,
PARASUVAIKKAL DESOM.

BY ADV. SRI.M.R.SUDHEENDRAN

RESPONDENTS:

R.DIVAKARAN NAIR,
ANUVILASAM, PAARSUVAIKKAL DESOM & VILLAGE.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 02/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISNAN, J.

W.P.(C).No. 23611/2007

Dated this 2nd day of August, 2007

JUDGMENT

The writ petitioner has challenged the order of the Additional Munsiff-II, Neyyattinkara, in E.P.171/2006 where the judgment debtor is ordered to be detained in civil prison for realisation of the decree amount. The writ petitioner is a Block Panchayat member. According to him, he is only having salary of Rs.1,500/- and he is suffering cardiac problems and the property, which he had, was sold as early as in 2000 where as suit is in the year 2004.

2. The Court below has not considered the case in the light of the decision of the apex Court in **Jolly George Varghese v. Bank of Cochin (1980 KLT 375)**, where it has been held that even one is having income and has to spend the amount for the purpose of treatment and if there is nothing to show there is an intentional evasion of payment of the amount, he should not be sent to prison. So order under challenge is set aside and the

Court below is directed to re-consider the matter afresh after affording an opportunity to both sides to substantiate their contentions regarding the means.

3. The Court below shall give notice to the decree holder and fix a date for proceedings further with the matter.

This writ petition is disposed of at the admission stage itself.

M.N.KRISHNAN,
JUDGE

mrcs